Commission shall institute proceedings under Section 19(b)(2)(B)[14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2013–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–NYSEMKT–2013–37.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

[14] 15 U.S.C. 78s(b)(2)(B).

All submissions should refer to File Number SR–NYSEMKT–2013–37 and should be submitted on or before July 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–15493 Filed 6–27–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69834; File No. SR–MSRB–2013–05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change To Amend MSRB Rules G–8, G–11 and G–32 To Include Provisions Specifically Tailored for Retail Order Periods

June 24, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 2013, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission a proposed rule change consisting of amendments to MSRB Rules G–8, G–11 and G–32, and conforming changes to Form G–32 (the ''proposed rule change'').

The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2013-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room.

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends Rules G–8, G–11 and G–32 to include provisions specifically tailored for retail order periods. These provisions will establish basic protections for issuers and customers and provide additional tools to assist with the administration and examinations of retail order period requirements, as further described below under ''Summary of Proposed Rule Change'' and under ''Discussion of Comments.''

The MSRB previously issued guidance to dealers on the subject of retail order periods. In 2010, the MSRB stated that Rule G–17 requires an underwriter to follow an issuer's directions in any applicable retail order period.[3] Most recently, the MSRB stated that fair dealing requires an underwriter to take reasonable steps to ensure that retail clients are *bona fide;* that an underwriter that knowingly accepts an order that has been improperly designated as a retail order violates Rule G–17; and that a dealer placing a non-qualifying order under a retail order period violates Rule G–17.[4] In that same notice, the MSRB indicated that it will continue to monitor retail order period practices to ensure that they are conducted in a fair and orderly manner consistent with the intent of the issuer and the MSRB's investor protection mandate. The proposed rule change reflects the MSRB's determination that additional rulemaking in this area is necessary and appropriate.

The MSRB believes that the proposed rule change is necessary in consideration of its mandate to protect municipal entities and investors. The proposed rule change addresses

[3] *See* MSRB Notice 2010–26 (August 15, 2010).

[4] *See* MSRB Notice 2012–25 (May 7, 2012) (the ''G–17 Underwriters' Notice'').

concerns related to retail order periods presented from issuers, dealers, and municipal advisors. Those concerns include the mischaracterization of orders as ''retail'' and the failure of syndicate managers to disseminate timely notice of the terms and conditions of a retail order period to all dealers, including selling group members,[5] or that pricing information that had been requested was not delivered or had not been delivered in sufficient time to allow for communication with the requesting dealer's ''retail'' customers to determine whether the investor would like to purchase the bonds.[6]

To address these concerns, the proposed rule change establishes specific obligations on the senior syndicate manager to disseminate to the syndicate and selling group members detailed information about the terms and conditions of any retail order period. The proposed rule change also requires dealers to capture certain additional information in connection with orders placed under a retail order period designed to ensure that such orders are from *bona fide* retail customers. In addition, the MSRB proposes to increase transparency for regulators regarding the use of retail order periods by amending Form G–32 to require an underwriter to report to the Electronic Municipal Market Access (EMMA®) [7] system when a retail order period was conducted.

The MSRB proposed, but thereafter reconsidered a decision to issue interpretive guidance related to Rules G–17 and G–30 in connection with the proposed rule change. The proposed interpretive guidance, among other things, emphasized that during a retail order period, an issuer may require underwriters to make a *bona fide* public offering to retail customers at the initial offering price for the securities, either directly or through other dealers, and that dealers must follow the issuer's instructions for retail order periods. The particular statement that a duty of fair dealing includes following an issuer's instructions for retail order periods is inherent in a rule on fair dealing, and, as mentioned earlier, was recently addressed in the G–17 Underwriters' Notice.

The proposed guidance also addressed pricing differentials, including that large differences between institutional and individual prices that exceed the price/yield variance that normally applies to transactions of different sizes in the primary market provide evidence that the duty of fair pricing to individual clients may not have been met. This statement repeated guidance previously provided by the MSRB.[8] The discussion that followed sought to apply that previously articulated guidance to a few specific factual scenarios but did not provide any analysis or guidance that did not fairly and reasonably flow from the MSRB's prior guidance. As discussed below, the limited scope of the discussion and the perception that only those items discussed would justify a pricing differential was of concern to some commenters. The thrust of this proposed rule change is to provide mechanisms by which issuers can have greater assurance that a dealer has, when directed to do so by the issuer, made a *bona fide* public offering of the securities to retail customers at their initial offering prices, as well as provide regulators with enhanced information to monitor the activities of dealers participating in retail order periods. A further discussion for the reasons the MSRB has not included the interpretive guidance is set forth below under ''Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others.''

The MSRB proposes to establish two separate implementation dates for the proposed rule change. The amendments to Rules G–11 and G–8, the core of the proposal, would be implemented six months after the SEC approval date to allow dealers sufficient time to make necessary software or systems modifications. It also would allow time for the MSRB to create educational materials, host webinars and conduct outreach to the dealer and issuer communities, as appropriate, regarding the new rules.

The second implementation date would relate to the amendments to Rule G–32 that require syndicate managers or sole underwriters to designate to EMMA whether a retail order period was conducted. The implementation date would be not later than March 31, 2014, or such earlier date to be announced by the MSRB in a notice published on the MSRB Web site with at least a thirty day advance notification prior to the effective date. This time frame would allow for the MSRB to design an automated system for dealers to report to the EMMA system. It would include approximately six months of lead time for Rule G–32 submitters to design automated interfaces and allow time for both Rule G–32 submitters and FINRA to test all of these changes.

Certain proposed rule changes are intended to be clarifying changes only and are not related to retail order periods, as further described below under ''Summary of Proposed Rule Change.''

Summary of Proposed Rule Change

Rule G–11

MSRB Rule G–11 addresses syndicate practices and management of the syndicate, and among other things, requires syndicates to establish priorities for different categories of orders and requires certain disclosures to syndicate members, which are intended to assure that allocations are made in accordance with those priorities.

The proposed addition of provisions addressing retail order periods necessitates several new definitions in Rule G–11. First, the term ''retail order period'' is defined in subparagraph (a)(vii) to mean an order period during which solely going away orders will be solicited solely from customers that meet the issuer's designated eligibility criteria. Second, the term ''going away order'' is defined in subparagraph (a)(xii) to mean an order for which a customer is already conditionally committed. Third, the term ''selling group'' is defined in subparagraph (a)(xiii) to mean a group of brokers, dealers, or municipal securities dealers formed for the purpose of assisting in the distribution of a new issue of municipal securities for the issuer other than members of the syndicate. Selling groups are sometimes included by issuers in the distribution of new issues of municipal securities to expand the distribution channel beyond the customers of syndicate members.

Rule G–11(f) requires that the senior syndicate manager furnish in writing to the other members of the syndicate a written statement of all terms and conditions required by the issuer. The proposed rule change expands these requirements to require expressly that such written statement must be delivered to selling group members and that the statement must include all of

[5] In some cases the length of a retail order period may be less than five hours.

[6] In some jurisdictions, it is not common practice to advertise the issuer's intention to conduct retail order periods on the radio, television or in the newspaper to inform the investing public of upcoming issuances and terms related to a retail order period. Advertisements to notify the investing public of retail order periods in connection with primary offerings of municipal securities can be very expensive and often issuers do not wish to incur this cost or reimburse dealers for this expense.

[7] EMMA is a registered trademark of the MSRB.

[8] *See* Guidance of Disclosure and Other Sales Practice Obligations to Individual and Other Retail Investors in Municipal Securities (July 14, 2009) (the ''Sales Practice Notice'').

the issuer's retail order period terms and conditions and pricing information. The proposed rule change further requires that an underwriter furnish each dealer with which it has an arrangement to market the issuer's securities all of the information provided by the senior syndicate manager.[9]

Rule G–11(f) also provides that if a senior syndicate manager prepares the statement of all of the terms and conditions required by the issuer (including those related to the issuer's retail order period requirements), the statement must be provided to the issuer. The proposed rule change adds the requirement to obtain the approval of the issuer of any statement prepared by the senior syndicate manager. This approval must be secured in all cases and is not solely limited to those instances when a retail order period is conducted. The MSRB believes that it is important to ensure that an issuer is aware of, and agrees with, any requirements imposed on the syndicate and selling group members in its name.

New paragraph (k) requires any dealer placing an order during a retail order period to provide certain information to assist in the determination that such order is a *bona fide* retail order. Specifically, the order must provide (i) Whether the order met the issuer's eligibility criteria for participation in the retail order period; (ii) whether the order was a going away order; (iii) whether the dealer received more than one order from a single customer for a security for which the same CUSIP number has been assigned; (iv) any identifying information required by the issuer, or the senior syndicate manager on the issuer's behalf, in connection with such retail order (but not including customer names or social security numbers); and (v) the par amount of the order. This information must be submitted no later than the Time of Formal Award (as defined in Rule G–34(a)(ii)(C)(1)(a)), and may be part of the order submitted to the senior syndicate manager through an electronic order entry system. Because a senior syndicate manager generally would not have independent knowledge of the details of an order placed on behalf of another dealer's customer, the proposed rule change provides that the senior syndicate manager may rely on the information furnished by such dealer, unless the senior syndicate manager knows, or has reason to know, that the information is not true, accurate or complete.

Rule G–8

Under Rule G–8(a)(viii)(A), for each primary offering for which a syndicate has been formed for the purchase of municipal securities, the syndicate manager shall maintain a variety of records which show: the description and aggregate par value of the securities; the name and percentage of participation of each member of the syndicate; the terms and conditions governing the formation and operation of the syndicate; a statement of all terms and conditions required by the issuer (including whether there was a retail order period and the issuer's definition of ''retail,'' if applicable); all orders received for the purchase of the securities from the syndicate;[10] all allotments of the securities and the price at which sold; those instances in which the syndicate manager allocated securities in a manner other than in accordance with the priority provisions, including those instances in which the syndicate manager accorded equal or greater priority over other orders to orders by syndicate members for their own accounts or their respective related accounts and the specific reason for doing so; the date and amount of any good faith deposit made to the issuer; the date of settlement with the issuer; the date of closing of the account; and a reconciliation of profits and expenses of the account. The proposed rule change to Rule G–8(a)(viii)(A) would add to the documentation that must be maintained in the files of the syndicate manager all orders received for the purchase of the securities from the selling group; the information required by Rule G–11(k) and all pricing information distributed pursuant to Rule G–11(f). Such changes will facilitate review by the examining authorities of *all* of the records related to a primary offering from files maintained by one underwriter[11] (which is more efficient) rather than a review of the files of each dealer that participates in the primary offering. The proposed rule change to Rule G–8(a)(viii)(A) (and the identical provision found in subsection (B)) reflects a change in phraseology. The parenthetical would be revised in each case to delete the reference to ''whether there was a retail order period and the issuer's definition of retail'' and to replace it with ''those of any retail order period.'' This part of proposed rule change is not intended to be a substantive change.

Under Rule G–8(a)(viii)(B), for each primary offering for which a syndicate has not been formed for the purchase of municipal securities, the sole underwriter shall maintain a variety of records which show: the description and aggregate par value of the securities; all terms and conditions required by the issuer (including whether there was a retail order period and the issuer's definition of ''retail,'' if applicable); all orders received for the purchase of the securities from the underwriter; all allotments of the securities and the price at which sold; those instances in which the underwriter accorded equal or greater priority over other orders to orders for its own account or its related accounts and the specific reason for doing so; the date and amount of any good faith deposit made to the issuer; and the date of settlement with the issuer. The proposed rule change to Rule G–8(a)(viii)(B) would add to the documentation that must be maintained in the files of the sole underwriter the information required by Rule G–11(k).

Rule G–32

Generally, Rule G–32(b) provides detailed requirements for underwriters submitting documents or disclosure-related information to EMMA. Rule G–32(b)(vi)(C)(1)(a) provides that an underwriter must submit data such as CUSIP numbers, initial offering prices or yields, if applicable, the expected closing date for the transaction and whether the issuer or other obligated persons have agreed to undertake to provide continuing disclosure information as contemplated by Securities Exchange Act Rule 15c2–12. The proposed rule change to Rule G–32(b)(vi)(C)(1)(a) adds to the data that must be submitted a requirement that the underwriter report to the EMMA system (for solely regulatory purposes) whether a primary offering of securities included a retail order period and each

[9] This arrangement, commonly referred to as a ''distribution or marketing agreement,'' is used by some firms to enhance the firm's ability to ''reach'' retail customers, such as in the case where a firm does not have a significant retail distribution network. Under the proposed rule change, the onus to furnish the information is placed on the underwriter that has entered into such arrangement, rather than the senior syndicate manager, to circulate this information because the senior syndicate manager may not be aware that a given syndicate member has entered into this type of arrangement.

[10] *See* Rule G–8(a)(vii) relating to dealer records for principal transactions. Dealers are not required to retain records related to customer orders unless an order has been filled. The requirement in the rule for a memorandum of the transaction including a record of the customer's order applies only in the event such purchase or sale occurs with the customer.

[11] Records related to a successful primary offering are required to be maintained for a period of not less than six years. *See* Rule G–9(a)(iv).

date and time (beginning and end)[12] it was conducted.[13]

Miscellaneous Clarifying Changes Unrelated to Retail Order Periods

Rule G–11(h)(i) provides that discretionary fees for clearance costs to be imposed by a syndicate manager and management fees shall be disclosed to the syndicate members prior to submission of a bid. The proposed rule change would require the syndicate manager specifically to disclose to each syndicate member the *amount* of any discretionary fees for clearance costs or any management fees imposed by the syndicate manager. The proposed rule change addresses concerns that certain syndicate managers failed to disclose the amount of such fees.

Rule G–32(a) provides requirements for the disclosure to customers of certain information in connection with primary offerings of municipal securities. Rule G–32(a)(i) provides, among other requirements, that no broker, dealer or municipal securities dealer shall sell, whether as a principal or agent, any offered securities to a customer unless such dealer delivers to the customer a copy of the official statement. The proposed rule change amends Rule G–32(a)(i) to clarify that all dealers, not just underwriters, are subject to the official statement delivery requirement of the rule during the primary offering disclosure period. This proposed change codifies the MSRB's long-standing position and would promote consistent application and reduce the number of interpretive questions surrounding this requirement.

Rule G–32(b)(v) provides that in the event a syndicate or similar account has been formed for the underwriting of a primary offering, the managing underwriter shall take the actions required under the provisions of the rule and shall also comply with the recordkeeping requirements of Rule G–8(a)(xiii)(B). Subsection (B) of Rule G–8(a)(xiii) addresses the recordkeeping requirements in the case of a primary offering in which a syndicate has *not* been formed. The proposed rule change would delete the reference to such recordkeeping requirements because the cross reference to ''(B)'' is incorrect.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[14] which provides that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.

The proposed rule change is consistent with Section 15B(b)(2)(C) of the Act. As summarized above, the proposed rule change protects, among others, investors and municipal entities by establishing certain basic regulatory standards to support the use of retail order periods. It would prevent fraudulent and manipulative acts and practices by requiring additional representations and disclosures to support whether the orders placed during a retail order period meet the eligibility criteria for retail orders established by issuers. It also provides enhanced recordkeeping to assist regulators in determining whether the requirements of Rule G–11 are being met. By ensuring that a syndicate manager must communicate an issuer's requirements for the retail order period and other syndicate information to all dealers, including selling group members, the proposed rule change should also foster cooperation and coordination among all dealers engaged in the marketing and sale of new issue municipal securities. In addition, the proposed rule change should minimize the opportunities for misrepresentation of orders as ''retail orders'' by requiring that certain information about each order is submitted in writing to the syndicate manager or sole underwriter in sufficient time so that the information can be examined by issuers and their financial advisors before bonds are allocated to dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The MSRB solicited comment on the potential burdens of the proposed rule change in the most recent request for comment.[15] Among the questions asked were:

- Would the Revised Draft Proposal effectively further the MSRB's objective of protecting issuers and retail investors?
- Would any aspects of the Revised Draft Proposal have a negative effect on the protection of issuers, retail investors or the public interest, or on the fair and efficient operation of the municipal securities market?
- What would be the incremental additional burden, if any, to dealers resulting from the Revised Draft Proposal beyond the existing burden of compliance with Rule G–11?
- Are there alternative methods the MSRB should consider to providing the protections sought under the Revised Draft Proposal that would be more effective and/or less burdensome?

The specific comments and responses thereto are discussed below under ''Discussion of Comments.'' The MSRB believes that the proposed rule change will benefit issuers, individual investors and the municipal market by improving the fairness and effectiveness of retail order periods. Specifically, the benefits of the proposed rule change should accrue to those issuers who have decided to conduct retail order periods by providing greater assurance that bonds will in fact be marketed to those ''retail'' investors that issuers have determined should have the opportunity to compete to buy their bonds in the primary market. Retail investors will benefit from the proposed rule change because they will have greater access to bonds sold in the primary market. Dealers will benefit through improved management of primary offerings and enhanced communication by and among syndicate members and selling group members. Also, improvements to the order taking process as a result of the proposed rule change will foster greater accuracy and fairness and limit opportunities for abuse. Finally, the proposed rule change will benefit the municipal market because it provides regulators with the necessary tools and information to ensure compliance with retail order period requirements.

The MSRB could, as an alternative to the proposed rule change, determine to ''wait and see'' if earlier rulemaking related to retail order periods issued in 2010 and 2012 [16] results in significant improvements in the conduct of

[12] All times would be required to be reported as Eastern Time to be consistent, for example, with the requirement to report time of trade under Rule G–14 as Eastern Time.

[13] Under the proposed rule change, the underwriter would be required to report to EMMA that a retail order period has occurred by no later than the closing date of the transaction. Under Rule G–32(b)(vi)(C)(1)(a), Form G–32 submissions shall be ''initiated on or prior to the date of first execution . . . '' The ''date of first execution'' is defined in Rule G–32(d)(xi) and, for purposes of this report, is deemed to occur by no later than the closing date.

[14] 15 U.S.C. 78o–4(b)(2)(C).

[15] *See* MSRB Notice 2012–50 (October 2, 2012) (the ''October Notice'').

[16] *See* MSRB Notices cited in footnotes 3 and 4 above.

syndicate managers and other dealers participating in retail order periods. However, the Board believes that earlier rulemaking lacked specific, concrete requirements necessary to modify dealer practices and foster improvements in compliance. In addition, previous rulemaking did not address many of the issues associated with recordkeeping which the Board believes is necessary and appropriate to support enforcement of Rule G–11.

The MSRB also considered whether education and training of issuers and dealers was a suitable regulatory alternative. However, the MSRB concluded that a significant and uniform regulatory response is needed to efficiently and effectively address widespread concerns involving retail order period practices.

The MSRB recognizes that there are costs of compliance associated with the proposed rule change. The MSRB notes that the requirement to submit additional information about each order would apply equally to all dealers that participate in primary offerings that include retail order periods. At the present time, dealers routinely submit a number of details related to each order. Many dealers have utilized software platforms which can be modified to capture the newly required disclosures. Details about orders are reflected in a report created by the platform. The customer specific information required under the proposed rule change is consistent with the type of information dealers normally must obtain in performing appropriate diligence on a customer's order. The proposed rule change attempts to minimize the potential burden on dealers by allowing the required information about each order to be submitted electronically. Moreover, any dealer that believes that gathering this additional information is an undue burden does not need to participate in collecting orders for an issuer's retail order period. The burden on dealers to capture additional information on each customer order in a retail order period is balanced against the need for issuers to have confidence that orders placed during a retail order period are *bona fide* and meet the issuer's eligibility requirements for participation in the retail order period.

The MSRB addressed concerns regarding the potential burdens to syndicate managers of auditing potentially large numbers of orders submitted to it by other dealers by expressly stating that a senior syndicate manager may rely upon the information furnished by each broker, dealer, or municipal securities dealer unless the senior syndicate manager knows, or has reason to know, that the information is not true, accurate or complete. The proposed rule change does not require that a syndicate manager undertake an exhaustive investigation of the disclosures about each order. Thus, the proposed rule change does not impose additional requirements on the senior syndicate manager other than those that would normally be required under principles of fair dealing that currently apply.

The recordkeeping requirements in Rule G–8 would be expanded under the proposed rule change to require the syndicate manager or sole underwriter to maintain all of the new documentation required as a result of amendments to Rule G–11. The MSRB believes that the maintenance of this basic information is necessary to ensure the integrity of the primary offering process in general and the retail order period in particular. These burdens are incremental in that under current Rule G–8, these parties are already required to maintain comprehensive records relating to each primary offering including all of the terms and conditions required by the issuer and whether there was a retail order period. Any reports produced electronically can be easily printed or saved and included in the deal file for easy retrieval.

Lastly, the amendments to Rule G–32 in the proposed rule change requiring the syndicate manager or sole underwriter to notify the MSRB of the date and time of each retail order period conducted presents only a modest, incremental burden to the existing requirements of Rule G–32, but provides significant regulatory value. Without this reporting requirement, neither the MSRB nor the examination authorities will have any notification of whether an offering contained a retail order period. To minimize the costs to dealers associated with this requirement, the MSRB would undertake to design an automated system for dealers to report to the EMMA system. The MSRB believes that it is reasonable to delay the implementation date for this part of the proposed rule change until such time as the automated system has been tested by the dealer community.

The MSRB notes that one issuer [17] has stated that the proposed rule change does not negatively impact the municipal securities market or its efficient operation and that, while there may be claims that the proposed rule change creates some additional burdens, in the opinion of that commenter, it is far outweighed by the benefit of an open, fair and efficient municipal marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The proposed rule change was developed with input from a diverse group of market participants. On October 2, 2012, the MSRB requested comment on a revised proposal on retail order periods under Rules G–11, G–8 and G–32 and a draft interpretive notice concerning the application of Rules G–17 and G–30 to retail order periods.[18] The revised proposal in the October Notice modified certain draft provisions of Rules G–11, Rule G–8 and the draft interpretive notice but did not further revise the provisions of Rule G–32 under the initial draft proposal.[19] The MSRB received 24 comment letters in response to the March and October Notices.[20]

Discussion of Comments

Definition of Retail Customer for Purposes of a Retail Order Period

Comments: MSRB Should Not Create a Definition of ''Retail:'' SIFMA generally supported the approach that it is an issuer's prerogative to determine whether there should be a retail order period and to define retail, but indicated concern on the part of some members that lack of uniformity as to the definition of retail may make it difficult to comply with the MSRB requirements to ensure that only qualifying orders are placed and to maintain adequate records. FPA agreed that there is no reason for the MSRB to create a uniform definition of retail but understood the appeal of a uniform base definition that could be modified by an issuer.

[17] *See* the comment letter submitted by the Executive Director of the Rhode Island Health and Educational Building Corp (RIHEBC)

[18] *See* the October Notice.

[19] *See* MSRB Notice 2012–13 (March 6, 2012) (the ''March Notice''), which contained the initial draft proposal regarding retail order periods under Rules G–11, G–8 and G–32 and a draft interpretive notice concerning the application of Rules G–17 and G–30 to retail order periods.

[20] Comment letters were received from: Alamo Capital (''Alamo''); Bond Dealers of America (''BDA''); CFA Institute (''CFA''); Dorsey & Company, Inc. (''Dorsey''); Edward D. Jones & Co. (''Edward Jones''); Financial Planning Association (''FPA''); Full Life Financial LLC (''Full Life''); Government Finance Officers Association (''GFOA''); Investment Company Institute (''ICI''); Richard Li (''Li''); Chris Melton (''Melton''); National Association of Independent Public Finance Advisors (''NAIPFA''); Rhode Island Health and Educational Building Corp. (''RIHEBC''); Securities Industry and Financial Markets Association (''SIFMA''); Thornburg Investment Management (''Thornburg''); Vanguard (''Vanguard''); and Wells Fargo Advisors (''Wells Fargo''). Some of the commenters submitted comment letter responses to both notices.

Comments: MSRB Should Create a Definition of ''Retail:'' Many commenters recommended, for a variety of reasons, that the MSRB establish a uniform definition of ''retail'' for use by issuers, or, in the alternative, create a ''model'' definition that issuers can use or modify as they deem appropriate.[21] GFOA's comments were representative of those commenters that believed that a boilerplate definition would benefit infrequent issuers who do not have sufficient expertise or who do not engage a financial advisor and may avoid reliance on other parties to the transaction who do not have a fiduciary duty to the issuer. Wells Fargo, Li and CFA believed that a uniform definition would make compliance more effective and less costly. Li, Full Life, GFOA and Edward Jones also supported a standard definition created by the MSRB with the option provided to issuers to create their own definition.

Comments: Divergent Views of ''Retail:'' Many commenters proffered specific proposals regarding definitions of retail that should be considered by the MSRB.[22] Some commenters favored a more limited definition that would include only individuals (*i.e.,* natural persons) while others would include orders from a trust department or registered investment advisor acting on behalf of a specifically identifiable natural person. Still others were either in favor of or against including mutual funds as ''retail'' customers. A few commenters offered arguments on behalf of or against the size of the customer order or locality of the customer as appropriate criteria for ''retail.''

MSRB Response: The current MSRB rules do not contain a definition of a ''retail'' customer and the MSRB has declined to create a definition in the proposed rule change in part because of concerns that an MSRB definition of ''retail'' may unduly influence certain issuers regarding the scope of eligible customers for a retail order period. The MSRB believes that issuers should designate the eligibility criteria for their retail order period on an issue-by-issue basis and issuers should have the flexibility to choose the criteria that best suits their unique circumstances even if this option results in lack of uniformity in the marketplace or challenges in compliance. As an alternative to a model MSRB definition, the MSRB believes that it is preferable to develop educational materials concerning retail order periods that would assist issuers in selecting their own definition. The MSRB can work with issuers and industry groups to develop model definitions and other best practices which would address this issue without the imprimatur of being a regulatory standard.

Communications Relating to Issuer Requirements

Comments: CFA supported the need for better and honest communication between various parties involved in the initial sale of municipal securities to investors. Full Life supported the proposals in principal, in particular requiring syndicate managers to disseminate timely notice of issuer requirements to all dealers, including selling group members.

MSRB Response: The MSRB appreciates these comments.

Comments: SIFMA was supportive of the timing in the current rule which requires the dissemination of information ''prior to the first offer of any securities. . . .'' SIFMA stated that among the terms and conditions required by the issuer related to the retail order period would be any time parameters for which the retail order period would be conducted. SIFMA stated that this information is especially important to dealers contacting customers with non-discretionary accounts. GFOA was supportive of a specific time frame in which the syndicate manager must provide issuer terms and conditions for the retail order period to other dealers.

MSRB Response: The MSRB is appreciative of SIFMA's comments. The MSRB does not agree that it is appropriate to impose a fixed time frame on dealers in a rule because of concerns that such a requirement could have unintended consequences. For example, it could hamper the marketing of a transaction if an issuer determines that an offering must come to market quickly.

Length of the Retail Order Period

Comments: Full Life said that the length of a retail order period should be sufficiently long to fulfill the issuer's intent. Full Life and Dorsey said that it should afford a genuine opportunity for retail investor participation. FPA stated that the period should be meaningful—it should be sufficiently long to allow an individual investor to make an informed decision.

Two commenters recommended that either the MSRB or the syndicate should fix the length of the retail order period. Dorsey said that the syndicate should specify a time reasonably sensible in length and should include the pricing structure. NAIPFA suggested that the MSRB establish a fixed timeframe for the retail order period.

Edward Jones recommended that ''meaningful notice of the retail order period'' would include 24-hour notice with preliminary pricing terms (*e.g.,* coupon, maturity, price and yield that an individual retail investor could use to form a reasoned investment decision) before the retail order period is to begin. Edward Jones suggested that an adequate retail order period should include a minimum of a full trading day with the issuer having the opportunity to extend the retail order period beyond a single trading day. Edward Jones supported a ''full day retail order period'' even if an institutional order period runs concurrently for some portion of the day.

MSRB Response: The MSRB believes that the current rule should not be revised because an issuer should retain control over the issuance process which includes the ability to adjust the length of time for the retail order period to suit its needs or market conditions.

Representations and Required Disclosures About Each Order

Comments: GFOA was supportive of the requirement to provide additional information about each order. NAIPFA was also supportive and believed it would be beneficial to issuers because it would allow issuers to better assess the effectiveness of their underwriter's ability to sell the issuers' securities as well as the underwriter's adherence to the issuers' instructions and also may help curtail flipping. Li said that details regarding the order could possibly be required by the senior manager to be communicated during the order process not just afterwards in order to prevent inadvertent misrepresentations. RIHEBC stated that it already requires much of the same information listed in the proposed rule change in order for it to judge the performance of the senior manager and co-managers.

MSRB Response: The MSRB appreciates these comments.

Comments: Alamo and BDA generally did not support the additional disclosures about each order because it would be an unreasonable administrative burden, costly and inconsistent. BDA said that the requirements are particularly burdensome in cases in which the dealer obtains large numbers of retail orders during retail order periods. BDA stated that burdens on dealers could have unintended consequences for everyone and perhaps discourage the practice of retail order periods

[21] CFA, Edward Jones, Full Life, GFOA, ICI, Li, NAIPFA, and Wells Fargo.

[22] Dorsey, Edward Jones, FPA, Full Life, ICI, NAIPFA, Vanguard, and Wells Fargo.

altogether and this can hurt issuers and retail investors. BDA suggested that, at most, dealers should comply with requirements of issuers to document or represent that they have complied with retail order period requirements. Melton said that required detailed disclosures regarding each order is inconsistent with permitting issuers to define retail and may not be completely necessary.

MSRB Response: The MSRB believes that the additional required disclosures will provide important information to the issuer. The MSRB understands that it is not uncommon for certain experienced issuers already to demand this additional information about orders. The MSRB believes it is essential to require the type of information contained in the rule because some issuers may not be sufficiently knowledgeable to ask for it or have appropriate leverage. Moreover, even when issuers have requested this information be gathered, it may not have been provided to them prior to the execution of the bond purchase agreement; this deadline is important so that the senior syndicate manager has all of the information it will need before committing the underwriters to the purchase of the bonds and before it allocates a share of securities to each dealer. In addition, one of the benefits of requiring written representations and disclosures is that it should help to minimize the likelihood of inadvertent misrepresentations related to whether or not a particular order meets the issuer's designated eligibility criteria.

Comments: SIFMA said that the representation that an order meets the issuer's definition of retail is more appropriate for the master Agreement Among Underwriters (AAU). Rather than providing the information about each order, the MSRB could provide that a dealer is deemed to have made the required representations by virtue of submitting an order during a retail order period or the representations can be made in the AAU or Selling Group Agreement (SGA), and that, therefore, it is not necessary for the representation to be made separately for each order submitted during the retail order period.

MSRB Response: SIFMA may wish to revise its standard form of AAU or SGA in support of the proposed rule change and the MSRB would be supportive of any agreement which seeks to bind members of the syndicate or selling group to honor the issuer's intentions. However, compliance with MSRB rules should stand independent of private agreements between parties.

Comment: Melton noted privacy concerns that may have led the MSRB to require dealers to identify customers without providing names and social security numbers. Dorsey and Edward Jones supported the required disclosure of zip codes to support retail priority as adequate and stated this should be adopted as an industry standard practice. Edward Jones suggested that the MSRB revise the proposal to limit the identifying information that the issuer may require. Edward Jones also suggested that an issuer should not be allowed to require dealers to provide customer account numbers, addresses, phone numbers or tax identification numbers. SIFMA said the rule should specify that any identifying information required by the issuer may not include customer account numbers, names or taxpayer identification numbers.

MSRB Response: Certain issuers have said to the MSRB that it would be helpful to have additional tools to verify orders. The MSRB believes that, if there are legitimate customer privacy protection issues associated with a specific request, particularly as it relates to certain identifying information or account numbers, an issuer may be amenable to allowing a dealer to truncate numbers before submission. The MSRB is aware that zip codes are often requested by issuers and usually provided by dealers in support of evidence that an order is from an individual or that the order is from a customer from a particular locality. Both issuers and dealers have acknowledged that it is easy to supply a zip code for a residential area and ''claim'' that it belongs to the order.

Comment: SIFMA also recommended that the MSRB create a safe harbor for senior syndicate managers so that senior managers would satisfy their own fair dealing obligations to the issuer when relying on representations made to them by other dealers that any orders submitted are retail orders.

MSRB Response: The MSRB agrees that a senior syndicate manager should, subject to certain exceptions, be entitled to rely on the information furnished by another dealer. However, the MSRB believes that a senior syndicate manager would not be entitled to rely on the information if the senior syndicate manager knows, or has reason to know, that the information is not true or accurate.

Recordkeeping

Comments: GFOA supported the new recordkeeping requirements on syndicate managers. SIFMA said that the proposed amendments requiring the syndicate members to keep such records are not warranted as they would be duplicative of recordkeeping requirements already imposed upon dealers. Edward Jones sought clarification as to whether the recordkeeping requirements applied to a sole managed deal, *i.e.,* a deal where there is no syndicate.

MSRB Response: The MSRB does not agree that proposed revisions to the recordkeeping requirements would be duplicative of recordkeeping requirements already imposed on dealers. Rule G–8(a)(vii) provides that the dealer keep a record of the customer's order in the event of a purchase or sale of municipal securities (so that a record of orders need not be retained if the order is not filled). Existing Rule G–8(a)(viii) requires that the records of all orders received (regardless of whether an order is filled) be maintained by the syndicate manager. The proposed rule change is necessary so that the additional information that must be provided by the senior syndicate manager or by each dealer as a result of the amendments to Rule G–11 will be retained in the centralized file maintained by the syndicate manager. The MSRB agrees and the proposed rule change applies to recordkeeping requirements in the case of a sole managed deal.

Comment: SIFMA said that dealers should not be required to share customer specific information with syndicate managers, and that it would be more appropriate (and should be sufficient for recordkeeping and enforcement purposes) that these customer order details remain with the dealer that maintains the customer relationship.

MSRB Response: The MSRB disagrees for the reasons stated above. Issuers will benefit from having access to customer specific information to verify orders and examinations will likely be more efficient due to centralized recordkeeping.

Revisions to Rule G–32 To Indicate That a Transaction Included a Retail Order Period

Comments: SIFMA and Full Life supported the proposed revisions to Rule G–32. Full Life said that it provides an opportunity for regulatory oversight essential to fostering administration of *bona fide* retail order periods that actually result in retail participation. SIFMA also recommended that the dates and times of any retail order period be reported to EMMA.

MSRB Response: The MSRB appreciates these comments. The MSRB agrees with SIFMA's recommendation and it is reflected in the proposed rule change to Rule G–32.

Additional Rulemaking Regarding Retail Order Periods

Comment: SIFMA stated that the G–17 Underwriters' Notice has adequately addressed the concerns regarding retail order periods so that additional rulemaking is not necessary.

MSRB Response: The MSRB considers the G–17 Underwriters' Notice as an important step towards improving practices in this area but it did not address all of the issues associated with retail order periods. More specific, concrete requirements in the proposed rule change should assist in compliance. For example, the G–17 Underwriters' Notice does not address many of the issues associated with recordkeeping. The proposed rule change also will support efforts by the issuer and the syndicate manager to audit orders.

Alternatives to Rulemaking

Comment: BDA suggested that if the MSRB produces educational materials, they should include specific guidance practices that issuers should consider in formulating effective retail order period rules. BDA recommended that issuers reserve the right to conduct an audit of compliance by the syndicate of retail order period rules. GFOA recommended that the MSRB seek to establish some type of protocol or system so that the issuer can have some comfort that retail orders meet the preset criteria set by the issuer.

MSRB Response: The MSRB would consider working with issuer trade associations on best practices which may address these issues.

Other Comments

Comment: Combined Order Periods: Vanguard said that all interested investors should be permitted to submit orders for municipal securities in the primary market and no priority should be given to retail orders, and that issuers would benefit from more accurate price discovery.

MSRB Response: The MSRB does not wish to substitute its judgment in place of that of issuers who manage their debt issuances. Issuers may choose to conduct combined order periods and the proposed rule change does not prevent them from doing so.

Comment: Definition of Selling Group: SIFMA suggested the definition of selling group be limited to those dealers that sign an SGA or substantially similar agreements for a particular new issue of municipal securities.

MSRB Response: The MSRB does not wish to define selling group by reference to an agreement which may not be executed in all cases, although the MSRB recognizes that it may be customary practice for selling group members to execute an SGA. In addition, duties of selling group members and the duties of syndicate managers to selling group members should apply to a dealer in a selling group even if for some reason it does not become a party to an SGA since to provide otherwise might have the unintended consequence of subverting the intent of Rule G–11 to apply to all dealers.

Comments: Definition of Going Away Orders: SIFMA suggested that the term going away order has not been previously defined under MSRB rules. Li included recommendations to address flipping.

MSRB Response: The term going away order was defined in an approval order concerning a previous revision to Rule G–11.[23] The proposed rule change was not directed at concerns related to flipping.

Comments: Interpretive Guidance related to Duties of All Dealers Placing Orders in Retail Order Periods and Fair Pricing: Wells Fargo suggested that the proposed guidance created a compliance challenge for firms, making almost any pricing difference subject to the whims and vagaries of which person is viewing the pricing and its fairness. SIFMA, BDA and Edward Jones raised concerns related to differential pricing between retail and institutional investors seeking specific examples of the characteristics of the securities that may fairly justify differences in pricing. SIFMA recommended that the MSRB clarify that the specific examples provided are not an exhaustive list and acknowledge that market conditions could shift within a day. GFOA suggested that the MSRB revise the interpretive guidance to state that price differences between the retail order period and the later institutional order period do not *per se* create an assumption of lack of fair dealing.

BDA found that revisions to the guidance provided a helpful discussion of how prices and yields may legitimately differ on sales of the same security. Wells Fargo suggested that retail and institutional orders should not receive different pricing and Full Life was supportive of guidance that would discourage differences in pricing as between retail and institutional investors in the new issue market. GFOA and NAIPFA were not supportive of the guidance as it related to fair pricing because of concerns that it would hurt issuers and, in the long-term, retail customers may be forced from the market.

MSRB Response: The MSRB is not proposing to issue additional guidance related to fair pricing at this time. The MSRB most recently issued guidance on the issue of fair pricing to individual clients in 2009.[24] The comments received on retail order periods and the Board's study of such programs does not establish a basis for additional pricing guidance at this time. In particular, that MSRB is mindful that any guidance should be grounded from further study and analysis and should consider the extent to which pricing differentials may affect an issuer's willingness to use a retail order period. As the MSRB continues to promote price transparency in the primary market, new issue pricing practices will be monitored to ascertain whether additional guidance is warranted.

Topics Related to Primary Offerings But Beyond the Scope of the Proposed Rule Change

Comment: Takedown: Full Life suggested that the MSRB should discourage consideration of disparity in takedown as influencing dealers' motivation to exhibit greater effort to secure institutional customers versus retail.

MSRB Response: The MSRB appreciates this comment but believes that at this time the MSRB should direct its rulemaking efforts towards ensuring that dealers submit orders only from retail customers.

Comment: Disclosures of Sales by Underwriters Following the End of the Underwriting Period: Li requested that the MSRB consider promulgating a rule requiring disclosure to issuers of sales for a period of time (perhaps seven days) following the end of the underwriting period. Li believed that this might allow the issuer to identify any pricing problems and support fair dealing.

MSRB Response: The MSRB appreciates this comment and will consider whether additional rulemaking is appropriate, but views this comment as outside the scope of the proposed rule change on retail order periods.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period of up to 90 days (i) as the Commission may designate if it finds such longer period

[23] *See* Securities Exchange Act Release 34–62715 (August 13, 2010); 75 FR 51128 (August 18, 2010); File No. SR–MSRB 2009–17.

[24] *See* the Sales Practice Notice.

to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MSRB–2013–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MSRB–2013–05. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2013–05 and should be submitted on or before July 19, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–15492 Filed 6–27–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69837; File No. SR–BX–2013–036]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving a Proposed Rule Change for Permanent Approval of a Pilot To Permit BX Options To Accept Inbound Options Orders From NASDAQ OMX PHLX LLC and NASDAQ Options Market

June 24, 2013.

I. Introduction

On May 7, 2013, NASDAQ OMX BX, Inc. (''Exchange'' or ''BX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change requesting permanent approval of the Exchange's pilot program that permits the BX Options System to accept inbound orders routed by Nasdaq Options Services LLC (''NOS'') from the NASDAQ OMX PHLX LLC (''PHLX'') and The NASDAQ Stock Market LLC's NASDAQ Options Market (''NOM''). The proposed rule change was published for comment in the **Federal Register** on May 21, 2013.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

BX Rule 2140(a) prohibits the Exchange or any entity with which it is affiliated from, directly or indirectly, acquiring or maintaining an ownership interest in, or engaging in a business venture with, an Exchange member or an affiliate of an Exchange member in the absence of an effective filing under Section 19(b) of the Act.[4] NOS is a registered broker-dealer that is a member of the Exchange, and currently provides to members of NASDAQ Stock Market LLC (''NASDAQ'') and PHLX optional routing services to other markets.[5] NOS is owned by NASDAQ OMX Group, Inc. (''NASDAQ OMX''), which also owns three registered securities exchanges—the Exchange, the NASDAQ and PHLX.[6] Thus, NOS is an affiliate of these exchanges.[7] Absent an effective filing, BX Rule 2140(a) would prohibit NOS from being a member of the Exchange. The Commission initially approved NOS's affiliation with BX in connection with NASDAQ OMX's acquisition of BX,[8] and NOS currently performs certain limited activities for the Exchange.[9]

On May 1, 2012, BX filed a proposed rule change to permit the Exchange to accept inbound orders that NOS routes in its capacity as a facility of NASDAQ and PHLX on a pilot basis subject to certain limitations and conditions.[10] On May 7, 2013, the Exchange filed the instant proposal to allow the Exchange to accept such orders routed inbound by NOS from NASDAQ and PHLX on a permanent basis subject to certain limitations and conditions.[11]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

---

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69576 (May 15, 2013), 78 FR 29795 (''Notice'').

[4] 15 U.S.C. 78s(b). BX Rule 2140(a) also prohibits a BX member from being or becoming an affiliate of BX, or an affiliate of an entity affiliated with BX, in the absence of an effective filing under Section 19(b). *See* BX Rule 2140(a)(2).

[5] NOS operates as a facility of both Phlx and NASDAQ that provides outbound routing from Phlx and NOM to other market centers, subject to certain conditions. *See* Phlx Rule 1080(m) and NASDAQ Options Rules, Chapter VI, Sec. 11 (Order Routing).

[6] *See* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01) (order approving NASDAQ OMX's acquisition of BX) (''BX Acquisition Order''). *See also* Securities Exchange Act Release 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31) (order approving NASDAQ OMX's acquisition of PHLX).

[7] *See id. See also* Notice, 78 FR 29795.

[8] *See* BX Acquisition Order, 73 FR 46944.

[9] *See, e.g.,* BX Options Rules, Chapter VI, Sec. 11 (Order Routing). *See also* Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030) (''BX Options Order'').

[10] *See* Securities Exchange Act Release No. 66983 (May 14, 2012), 77 FR 29730 (May 18, 2012 (notice of proposed rule change to establish BX Options market and allow, among other things, BX to accept inbound orders from NASDAQ and PHLX on a one-year pilot basis).

[11] *See* Notice, 78 FR 29795–29796.